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tract No. SANCARLOSAPI21180A
Amendment No. 1
AMEND-SC5

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

CENTRAL ARIZONA PROJECT
INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

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Amendment No. 1

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INDIAN WATER DELIVERY CONTRACT
BETWEEN THE UNITED STATES AND THE SAN CARLOS APACHE TRIBE

1. PREAMBLE: THIS AMENDMENT NO. 1, hereinafter called "Amendment No. 1," made this 29th day of January 1999, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto; the Boulder Canyon Project Act (45 Stat. 1057) 43 USC § 614 et seq. (1928); the Ak-Chin Indian Community Water Rights Settlement Act, Public Law 98-530 dated October 19, 1984 (98 Stat. 2698); the Colorado River Basin Project Act (82 Stat. 885) 43 USC § 1501 et seq. (1968); the San Carlos Apache Tribe Water Rights Settlement Act of 1992, 106 Stat. 4740, as amended (the "Settlement Act"); and the various authorities and responsibilities of the Secretary of the Interior, hereinafter called "Secretary," in relation to Indians and Indian Tribes as contained in Title 25 USC and 43 USC; between the United States of America hereinafter called "United States," and the San Carlos Apache Tribe, hereinafter called "Tribe," located on the San Carlos Apache Reservation, Arizona, each individually sometimes hereinafter called "Party" and sometimes collectively called "Parties:"

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1 WITNESSETH. THAT

2 2. EXPLANATORY RECITALS:

3 2.1 WHEREAS. the Parties hereto desire to enter into this Amendment
4 No. 1 for purposes of making certain water available to the Tribe as
5 contemplated by the Settlement Act; and

6 2.2 WHEREAS. the Parties anticipate entering into additional
7 amendments to this Contract to implement additional provisions of the San
8 Carlos Apache Tribe Water Rights Settlement Act of 1992, as amended;

9 2.3 WHEREAS Section 3704(a) of the Settlement Act, 106 Stat. at 4742,
10 provides. among other things. that the Secretary of the Interior shall
11 reallocate. for the exclusive use of the Tribe, all of the water referred to
12 in subsection (f)(2) of Section 2 of the Act of October 19, 1984 (98 Stat.
13 2698) (hereinafter the "Ak-Chin Indian Water Settlement Act"). which is not
14 required for delivery to the Ak-Chin Indian Reservation under the terms of the
15 Ak-Chin Indian Water Settlement Act;

16 2.4. WHEREAS Section 3706(b)(1) of the Settlement Act, 106 Stat. 4645 -
17 4746, requires. among other things. the Secretary of the Interior to amend the
18 Tribal CAP Delivery Contract to include therein the obligation of the United
19 States to deliver to the Tribe upon the same terms and conditions set forth in
20 the Tribal CAP Delivery Contract water from sources described in Subsection
21 (a) of Section 3704 of the 1992 Settlement Act;

22 2.5 WHEREAS the Secretary has independent statutory authority to
23 allocate and to contract for the delivery of CAP water, pursuant *inter alia*,
24 to those statutory authorities set forth in Paragraph above; see also, *Arizona*
25 *v. California*, 373 U.S. 546 (1963); *Maricopa Stanfield Irrigation and Drainage*
26 *District v. United States*, 158 F.3d 428 (1998);

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1 2.6. WHEREAS the United States and the Tribe have not agreed at this
2 time on whether the authorities and obligations of the United States described
3 in Paragraphs 2.3 or 2.4 above include an authority or an obligation for the
4 United States to design or construct new facilities to deliver the CAP water
5 described in Paragraph No. 2.3 above, or to provide funds to the Tribe to
6 perform such design or construction.

7 NOW THEREFORE, in consideration of the mutual and dependent covenants
8 herein, it is agreed by the Parties hereto as follows:

9 3. PURPOSE OF AMENDMENT NO. 1: This Amendment No. 1 modifies Contract
10 No. SANCARLOSAPI21180A, "Central Arizona Project Indian Water Delivery
11 Contract Between the United States and the San Carlos Apache Tribe," dated
12 December 11, 1980, hereinafter called "Contract," to (1) include the
13 obligation by the Secretary to deliver to the Tribe Project Water as follows:
14 To deliver to the Tribe, for the exclusive use of the Tribe, all of the water
15 referred to in subsection (f)(2) of Section 2 of the Ak-Chin Water Settlement
16 Act which is not required for delivery to the Ak-Chin Indian Reservation under
17 that Act; and (2) to enable the Tribe to lease water to which it is entitled
18 pursuant to this Contract under terms and conditions set forth in subarticle
19 4.3(e) herein.

20 4. AMENDMENT OF WATER DELIVERY CONTRACT:

21 4.1 Subarticle 3.23 is hereby added:

22 3.23 "Excess Ak-Chin Water" shall mean Project Water
23 allocated to the Community and determined to be
24 available by the Secretary in excess of the quantity
25 required for delivery to the Community, in
26 satisfaction of the Secretary's water delivery

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obligations pursuant to the subsection 2(f) of Section
2 of the Ak-Chin Indian Community Water Rights Act of
October 19, 1984 (the "Excess Ak-Chin Water").

4.2 Article 4.3(e) of the Contract is hereby deleted and the
following substituted in lieu thereof:

4.3 Conditions Relating to Delivery.

(e) The Tribe shall not sell or permit the sale or
other disposition of any Project Water for use outside the Tribe's
Reservation except:

(1) Subject to the approval of the Contracting
Officer, the Tribe is hereby authorized to enter into lease
agreements or options to lease 14,000 acre feet of Project Water
to which the Tribe is entitled pursuant to this Contract, as
amended, for delivery to the Phelps Dodge Corporation in
accordance with the Settlement Act, as amended; and

(2) The Tribe may exchange Project Water and may
change times and places of delivery of Project Water, subject to
the approval of the Secretary; and

(3) Excess Ak-Chin Water delivered pursuant to this
Contract shall retain the priority such water held prior to
execution of this Amendment No. 1.

(4) Section 2(c) of the Ak-Chin Indian Water Settlement
Act, 98 Stat. at 2699, defines "time of shortage" of Colorado River water
available to the Central Arizona Project. That definition is applicable to
determining the "time of shortage" for the Excess Ak-Chin water available to
the Tribe under this Amendment.

4.4 Delivery Entitlement and Obligations

Article 4.5 of the Contract is hereby deleted and the following substituted in lieu thereof:

The United States or the Operating Agency will not be required to deliver to the Contractor under this contract in excess of 46,000 acre feet of Project Water yearly during the life of the Project. The quantity of water available for delivery to the Tribe is dependent upon the quantity of Excess Ak-Chin water available on a year-to-year basis.

5. CONTROLLING TERMS AND CONDITIONS:

Except as expressly modified herein, or as otherwise provided, the terms and provisions of Contract No. SANCARLOSAPI21180A shall remain in full force and effect. In the event any of the terms and conditions of this Amendment No. 1 and Contract No. SANCARLOSAPI21180A conflict, this Amendment No. 1 shall control. There is no agreement between the United States and the Tribe as to whether the authorities and obligations of the United States include an authority or an obligation for the United States to design or construct new facilities to deliver the CAP water described in Paragraphs No. 2.3 and No. 2.4 above, or to provide funds to the Tribe to perform such design or construction.

6. Status of the Amendment

This Contract, as amended by Amendment No. 1, shall remain in full force and effect whether or not the provisions of the San Carlos Apache Tribe Water Settlement Act of 1992, as amended, become enforceable. That portion of Section 3711(b) of the Settlement Act which renders ineffective certain contracts if the Settlement Act is not fully implemented shall not render invalid that part of this Amendment which grants the Tribe a right to the

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1 quantity of Excess Ak-Chin Water set forth in this Amendment.
2 IN WITNESS WHEREOF, the Parties hereto have executed this Amendment
3 No. 1 the day and year above written.
4

5 THE UNITED STATES OF AMERICA

6 Legal Review and Approval:

7 By: [Signature]
8 Field Solicitor
9 Phoenix, Arizona

By: [Signature]

Robert W. Johnson
Regional Director
Lower Colorado Region
Bureau of Reclamation

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11
12
13 SAN CARLOS APACHE INDIAN TRIBE

14 ATTEST:

15
16 By: [Signature]
Chairman

17 By: [Signature]
18 Secretary

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